

Louie Azzolini

From: Louie Azzolini
Sent: Thursday, August 23, 2001 4:55 PM
To: Brett Hudson (E-mail); Bridgette Larocque; Buddy Williams (E-mail); CARC Kevin (E-mail); Chamber of mines ED (E-mail); CPAWS (E-mail); Dechi Laot'i First Nation (E-mail); Doug Soloway (E-mail); EAO2; Ecology North (E-mail); Health Canada 2 (E-mail); John Donihee (E-mail); John Ramsey (E-mail); Julie Dahl (E-mail); Lana Paulson (E-mail); LKDFN Wildlife Lands Environment Ctte (E-mail); Lutsel K'e Dene First Nation (E-mail); Mark Dahl (E-mail); Mark Lange DFO (E-mail); Mary Tapsell (E-mail); MVLWB Permit (E-mail) (E-mail); NSMA Bob Turner (E-mail); Nunavut Impact Review Board (E-mail); Paula Pacholek [Yel] (E-mail); Robin Johnstone (E-mail); Roland Semjanovs; Roland Semjanovs (E-mail); Sierra Legal Defence Fund (E-mail 2); Stephen Harbicht (E-mail); Tamara Hamilton (E-mail); Tim Byers (E-mail); Vern Christensen; Wha Ti First Nation (E-mail); William (Bill) Carpenter (E-mail); WWF - Peter J. Ewins (E-mail); WWF Tony Y. (E-mail); YK Chamber of Commerce (E-mail)
Subject: procedural concern with the MVEIRB

Please see the letter provided by De Beers to the MVEIRB regarding recent requests for rulings and recommendations.

File:EA01-004

August 23, 2001
VIA FAX
ORIGINAL VIA MAIL

Chairperson
Mackenzie Valley Environment Impact Review Board
PO Box 938
Yellowknife NT X1A 2N7

Attention: Mr. Gordon Lennie

Dear Mr. Lennie:

SUBJECT: Snap Lake Diamond Project

De Beers Canada Mining Inc. would like to raise a procedural concern with the MVEIRB. It pertains to the MVEIRB's letter of August 16, 2001, addressed to Mary Tapsell of the Department of Indian Affairs and Northern Development ("INAC") and Kevin O'Reilly of the Canadian Arctic Resources Committee ("CARC") with respect to their recommendations/request for rulings that formal scoping meetings or hearings be held in respect of the Snap Lake Diamond Project Environmental Assessment (EA). Your letter requested that INAC and CARC submit information for the Board's consideration in support of the decision being sought (i.e. hearings).

We further note that while reference is made to Rules 50-54 of the Review Board's draft Rules of Procedure, the request that INAC and CARC provide the Review Board with a clear and concise statement of the relevant facts, the decision being sought and rationale for making the recommendation and request, is a use of the words found in Rule 48.

De Beer's concern is with the Review Board's application of its Draft Rules and Procedures, specifically, with the failure of the Board to provide the Applicant with an opportunity to reply. The rules of natural justice provide an applicant with an opportunity to be apprised of issues raised and an opportunity to address those issues fully. If the rules of natural justice and procedural fairness are to be applied, the Applicant must always have the right to reply in a timely fashion to each and every submission that any Intervener or member of the public may wish to make about the Application.

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If you look back to the above referred letter of August 16, 2001, from the Review Board to Mary Tapsell and Kevin

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that formal scoping meetings or hearings be held in respect of the Snap Lake Diamond Project Environmental Assessment (EA). Your letter requested that INAC and CARC submit information for the Board's consideration in support of the decision being sought (i.e. hearings).

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De Beer's concern is with the Review Board's application of its Draft Rules and Procedures, specifically, with the failure of the Board to provide the Applicant with an opportunity to reply. The rules of natural justice provide an applicant with an opportunity to be apprised of issues raised and an opportunity to address those issues fully. If the rules of natural justice and procedural fairness are to be applied, the Applicant must always have the right to reply in a timely fashion to each and every submission that any Intervener or member of the public may wish to make about the Application.

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If you look back to the above referred letter of August 16, 2001, from the Review Board to Mary Tapsell and Kevin O'Reilly, what is missing, based upon the foregoing discussion, is an opportunity for the Applicant to be heard after the Interveners have provided the required information to the executive director on or before August 24, 2001. Our concern is that unless the Review Board amends its practices so that the Applicant will automatically have the right to reply, the process will be flawed and subject to Judicial Review.

The Review Board should first set a date for Interveners' submissions, then a later date for the Applicant to reply and the Interveners should have to copy the Applicant with their submissions as of the date they are submitted to the Review Board and the Applicant should likewise have to do the same thing with its reply. In this way, procedural fairness is achieved as the Applicant is given an opportunity to be heard on the submissions made by Interveners prior to the Review Board making its final determination.

In closing, it is our understanding that Review Board will make a decision on August 29th or 30th on information supplied by CARC and INAC. In order to ensure procedural fairness, may we therefore have from you a date by which De Beers may be heard, which should be later than August 24th, so that we may reply to any submissions made by either INAC or CARC, prior to the Review Board making a decision?

Sincerely,

SNAP LAKE DIAMOND PROJECT

Robin Johnstone, PhD
Senior Environmental Manager

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